

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Lisitano Produce, Inc.

v.

Civil No. 05-cv-297-PB

Veggi Guys, L.L.C.,
Robert Cote and Keith Stern

REPORT AND RECOMMENDATION

A Stipulation of Dismissal has previously been entered resolving all claims against defendants Veggi Guys, L.L.C. and Keith Stern. Robert Cote has defaulted. The motion for assessment of damages has been referred to me for a Report and Recommendation.

Background Facts

The action is a suit for damages under the Perishable Agricultural Act, 7 U.S.C. § 499a, et. seq. (hereinafter "PACA") by Lisitano Produce, Inc. The plaintiff is a licensed wholesaler of produce who provided defendants with product for which defendants did not pay.

The remaining defendant has defaulted. Plaintiff is entitled to judgment against defendant Cote and has submitted evidence on damages for its deliveries of unpaid for goods, on

its right to interest, and on its attorney's fees and costs.

1. Damages For Unpaid For Goods.

Plaintiff proved that it is entitled to \$3,226.00 against defendant Cote for goods unpaid for (goods supplied totaling \$15,726.00 less \$12,500.00 received from Veggi Guys and Keith Stern.

2. Interest and Attorney's Fees.

Section 5(c) of the PACA, 7 U.S.C. § 499e(c) and the regulations require sufficient funds in trust to pay plaintiff fully and timely. Full payment is not received if plaintiff cannot recoup its legal fees and interest on the unpaid sums.

a. Attorney's Fees

Plaintiff has submitted a complete statement of its fees and expenses, supported by affidavits detailing hourly rates, time expended and tasks performed. Given the expertise of counsel the court finds the rates requested to be reasonable. Counsel's time was efficient and necessary and all entries are approved.

The court finds that plaintiff is entitled to recover fees of \$6,518.35 and expenses of \$387.42.

3. Summary Judgment.

Judgment for plaintiff as follows:

Damages	\$3,226.00
Interest	387.42
Atty, Fees, Costs	6,518.35

I recommend judgment for Lisitano of \$12,859.37 with per diem interest from May 8, 2006.

If this recommendation is approved, the claims as identified in this report and recommendation, will be considered for all purposes to be the claims raised in the complaint. If the plaintiff disagrees with the identification of the claims herein, plaintiff must do so by filing an objection within ten (10) days of receipt of this report and recommendation, or by properly moving to amend the complaint.

Any objections to this report and recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Unauthorized Practice of

Law Committee v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992);
United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).



James R. Muirhead
United States Magistrate Judge

Date: May 15, 2006

cc: Louis W. Diess, III, Esq.
Carl D. Hanson, Esq.
Donald J. Perrault, Esq.